

Craig G. Russillo, OSB #973875
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SCHWABE, WILLIAMSON & WYATT, P.C.
360 SW Bond Street, Suite 500
Bend, OR 97702
Telephone: 541.749.4044
Facsimile: 541.330.1153

Attorney for Plaintiff, South Coast Lumber Co.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

**SOUTH COAST LUMBER CO., an
Oregon corporation,**

Plaintiff,

vs.

**BLUE LAKE POWER, LLC, a California
limited liability company,**

Defendant.

No. _____

**COMPLAINT (Breach of Contract; Goods
Sold and Delivered; Quantum Meruit)**

JURY DEMAND

Plaintiff South Coast Lumber Co. ("South Coast"), hereby alleges as follows:

FIRST CLAIM FOR RELIEF

(Breach of Contract)

1.

South Coast is an Oregon corporation which at all material times was authorized to conduct business within the State of Oregon. South Coast's principal place of business is in Brookings, Oregon.

2.

Defendant Blue Lake Power, LLC (“BLP”), is a California limited liability company, with its principal place of business in Redding, California.

3.

This court has original jurisdiction to hear this matter under 28 U.S.C. § 1332, because South Coast and BLP are citizens of different states and the amount in controversy exceeds \$75,000.00. Venue is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to South Coast’s claims in this action occurred in the District of Oregon.

4.

On or about March 13, 2014, South Coast and BLP executed a Fuel Purchase Agreement (the “Agreement”). A true copy of the Agreement is attached to this complaint and incorporated herein as Exhibit 1.

5.

Under the Agreement, South Coast agreed to provide and BLP agreed to purchase certain wood fiber, referred to in the Agreement as “boiler ready fuel.”

6.

Upon information and belief, BLP intended to use the boiler ready fuel to produce electricity, which it would then sell to retail and commercial customers.

7.

Pricing for the boiler ready fuel was based off the weight, referred to in the Agreement as the “bone dry ton” or “BDT.” A BDT is defined in the Agreement as 2,000 pounds of wood fuel with 0% moisture content.

8.

Under the Agreement, BLP agreed to pay South Coast \$43.00 per BDT.

9.

Between the execution of the Agreement through May of 2015, South Coast delivered to BLP 289 loads of boiler ready fuel, which loads had an aggregate BDT of 3,654.43. At \$43.00 per BDT, the amount owed for the boiler ready fuel delivered is \$157,140.49.

10.

BLP has failed and refused to pay for the boiler ready fuel delivered by South Coast.

11.

On July 14, 2015, South Coast, through counsel, sent BLP a letter demanding payment of the \$157,140.49. A copy of the July 14 letter is attached to this complaint and incorporated herein as Exhibit 2.

12.

Despite receipt of the letter, BLP has failed to pay South Coast the \$157,140.49 demanded.

13.

South Coast has performed all conditions precedent under the Agreement, or such conditions have been excused.

14.

BLP is in default under the Agreement by failing to pay South Coast the \$157,140.49 for boiler ready fuel delivered by South Coast to BLP.

15.

As a direct and proximate result of BLP's default under the Agreement, South Coast is entitled to a judgment and money award against BLP in the principal amount of \$157,140.49, together with interest at the statutory rate of 9% per annum, accruing from July 14, 2015, until fully paid.

SECOND CLAIM FOR RELIEF

(Goods Sold and Delivered)

16.

South Coast realleges the above paragraphs.

17.

At BLP's specific request, South Coast delivered to BLP 3,654.43 BDT of boiler ready fuel. The reasonable value for the boiler ready fuel is \$157,140.49. BLP has failed to pay the reasonable value for the boiler ready fuel, despite demand from South Coast.

18.

As a result of BLP's failure to pay the reasonable value for the boiler ready fuel delivered by South Coast, South Coast is entitled to a judgment and money award against BLP in the in the principal amount of \$157,140.49, together with interest at the statutory rate of 9% per annum, accruing from July 14, 2015, until fully paid.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

19.

South Coast realleges the above paragraphs.

20.

Unless BLP is ordered to pay \$157,140.49, together with interest at the statutory rate of 9% per annum, accruing from July 14, 2015, until fully paid, BLP will be unjustly enriched to South Coast's detriment. Accordingly, South Coast is entitled to a judgment and money award against BLP in the amounts set forth herein.

WHEREFORE, South Coast requests the following relief:

1. On its First, Second, and Third Claims for Relief, a judgment and money award against BLP in the principal amount of \$157,140.49, together with interest at the statutory rate of 9% per annum, accruing from July 14, 2015, until fully paid;

2. For South Coast's costs and disbursements incurred herein;
3. And for such further and additional relief as the court deems just and equitable.

JURY DEMAND

21.

Pursuant to FED. R. CIV. P. 38(b), Plaintiff demands a trial by jury of all issues presented in this complaint which are triable by jury.

Dated this 1st day of September, 2015.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Craig G. Russillo
Craig G. Russillo, OSB #973875
Telephone: 541.749.4044
Facsimile: 541.330.1153
Of Attorneys for Plaintiff South Coast
Lumber Co., an Oregon corporation

Blue Lake Power, LLC
Fuel Purchase Agreement
(Bone Dry Ton Basis)

Buyer: Blue Lake Power, LLC.
1615 Continental Street, Suite 100
Redding, CA 96001

Seller: South Coast Lumber
P.O. Box 670
Brookings, OR 97415

Attention: Spike Bruggeman
541-469-2136
spikeb@socomi.com

I. Seller agrees to sell and Buyer agrees to purchase certain wood fiber (referred to herein as "boiler ready fuel"), at the per-bone dry ton (BDT) price shown below:

Chipped Boiler Ready Fuel: **Boiler ready fuel price and daily load deliveries are listed below:
\$43.00/BDT - DF Bark - at 4-6 loads per day. A mixture of 80% Bark/20% Shavings is permissible.**

A bone dry ton is defined as 2,000 pounds of wood fuel with 0% moisture content, also known as an oven dry ton.

Minimum quantity to be delivered: 0 bone dry tons per day
Maximum quantity to be delivered: 100 bone dry tons per day

This Fuel Purchase Agreement covers the period:

Beginning: March 17, 2014

Expiring: December 31, 2014

II. Seller warrants that Seller has all right, title, and interest in the boiler ready fuel, free of any liens or encumbrances, being sold to Buyer. Title shall pass to Buyer upon delivery and acceptance by Buyer.

III. Boiler ready fuel shall be produced in accordance with the following specifications:

1. Fuel shall not contain any foreign matter including metal, glass, paper, dirt, cement, plastic, rocks, stones, etc.
2. Fuel shall not contain any paint, varnish, stain, wax, oil, resin or other coating or treatment material.
3. Decayed wood shall be kept to a maximum of 1% of tonnage supplied in any one month.
4. Fuel shall be sized to fit through a 3-inch screen. Fine material (less than 1/4") shall be kept to a maximum of 5% of each delivery by weight.

IV. Buyer shall reserve the right to refuse any unacceptable fuel not meeting specifications above and has no obligation to pay for unacceptable fuel whether or not it is consumed at its facility. If discovered before mixing with other fuel, unacceptable fuel shall be removed from Buyer's facility by Seller at Seller's expense promptly upon Buyer's determination and notification of Seller.

V. Buyer shall have the right to inspect Seller's feedstock and manufacturing process at any reasonable time for the purpose of assuring the quality of its fuel supply.

VI. Buyer shall reserve the right to terminate this agreement with five days notice to Seller.

VII. Truck drivers are responsible to check and verify the condition of their trucks and vans before leaving the BLP yard. No trucks may leave the yard with loose fuel particles remaining on areas where they can fall or be blown off on the city streets.

VIII. Seller agrees to provide certificates of insurance to Buyer in accordance with the following:
During the term of this agreement, Seller shall maintain general liability insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate, property damage insurance with a minimum coverage of \$1,000,000 and Workman's Compensation insurance as required by the laws of the state in which Seller's premises is located. Seller agrees to name Buyer as an additional insured.

IX. The term of this Agreement may be extended by mutual agreement of Buyer and Seller as stated below unless terminated or superseded. After the date of expiration, delivery by Seller and acceptance of boiler ready fuel by Buyer shall constitute an acceptance of the extension by both parties, and shall constitute acknowledgement by the respective parties that all other terms and conditions of this Agreement remain in force. Buyer reserves the right to alter the quantity specified as its business and reasons dictate.

X. Price, Delivery, and Payment: The price for boiler ready fuel shall be as stated above, delivered F.O.B. to the Buyer's facility located in Blue Lake, California, during regular posted delivery hours in effect on the date of delivery. Payment shall be made by Buyer to Seller at the address stated above on or before the first day of each calendar month for all fuel delivered and accepted by Buyer during the period of the first day through the fifteenth day of the preceding calendar month; and on or before the fifteenth day of each calendar month for fuel delivered and accepted by Buyer during the period of the sixteenth day through the last day of the preceding calendar month.

XI. Each party shall indemnify, defend, and hold harmless the other party, its officers, directors, agents, and employees against all loss, claims, damage, expense, and liability to third parties for injury to or death of persons or injury to property, proximately caused by the indemnifying party's negligent or willful acts or omissions in connection with this Agreement. The indemnifying party shall, at the other party's request, defend against any suit asserting a claim covered by this indemnity. The indemnifying party shall pay all costs that may be incurred by the other party in enforcing this indemnity.


XII. Except as otherwise expressly provided in this Agreement, should the performance of any act required by this Agreement to be performed by either Buyer or Seller be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for the performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

Buyer Signature: 

Buyer Name: Blue Lake Power, LLC.

Title: Controller

Date: 3-13, 2014

Seller Signature: 

Seller Name: J.E. BRUGGEMAN JR.

Title: OPERATIONS MANAGER

Date: 3/13/2014



Pacwest Center, 1211 SW 5th Ave., Suite 1900, Portland, OR 97204 | Phone 503.222.9981 | Fax 503.796.2900 | www.schwabe.com

GREGORY D. FULLEM

Admitted in Oregon and Washington

Direct Line: 503-796-3736

E-Mail: gfullem@schwabe.com

July 14, 2015

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Glenn A. Zane
Blue Lake Power, LLC
1615 Continental Street, suite 100
Redding, CA 96001

RE: Overdue Payments Owed to South Coast Lumber Co.

Mr. Zane:

Our firm represents South Coast Lumber Co., which entered into a Fuel Purchase Agreement with Blue Lake Power, LLC, dated March 13, 2014. In accordance with the terms of the referenced agreement, South Coast delivered 289 loads of boiler ready fuel to Blue Lake Power during the period beginning on March 1, 2015, and extending through May 31, 2015, in connection with which Blue Lake Power owes South Coast the aggregate sum of \$157,140.49. Attached to this letter is a table describing the loads in question and the respective payments due in connection with the same from Blue Lake Power to South Coast.

We hereby demand that Blue Lake Power immediately pay to South Coast the entire sum of \$157,140.49. If that sum is not paid to our client at its address set forth in the agreement on the date that is ten (10) days following the date of this letter, then we will pursue any appropriate remedy available to our client under the agreement and applicable law, including a suit for recovery of all sums due, together with any interest and attorneys' fees that may be available.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'G. Fullem', written over the typed name.

Gregory D. Fullem

GDF:csb

Attachment

cc: Spike Bruggeman
Virgil Frazier

Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044 | Eugene, OR 541.686.3299
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

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Exhibit 2
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Glenn A. Zane
 July 14, 2015
 Page 2

Outstanding Invoices

Blue Lake Power, LLC
 1615 Continental Street, Suite 100
 Redding, CA 96001

<u>Date Range</u>	<u># Loads</u>	<u>BDT</u>	<u>Amount</u>
3/01-3/15/15	51	692.23	\$ 29,765.89
3/16-3/31/15	81	967.08	\$ 41,584.44
4/01-4/15/15	84	1,048.64	\$ 45,091.52
4/16-4/30/15	66	864.83	\$ 37,187.69
5/01-5/15/15	5	58.93	\$ 2,533.99
5/16-5/31/15	2	22.72	\$ 976.96
Total	289	3,654.43	\$ 157,140.49

